

## ***CHAPTER II***

### ***SALES TAX/VALUE ADDED TAX***

## Executive Summary

Increase in tax collection	In 2010-11 the collection from sales tax/value added tax increased by 26 <i>per cent</i> over the previous year.
Internal audit	Internal audit of Commercial Taxes Department was conducted on an average of 40 <i>per cent</i> of the offices. The Department attributed the reasons for lesser coverage of internal audit due to shortage of man power in the Internal Audit Wing
Results of audit conducted by us in 2010-11	<p>In 2010-11, we test checked the records of 225 units and found underassessment of tax and other irregularities amounting to ₹ 192.84 crore in 1,116 cases.</p> <p>The Department accepted underassessments and other deficiencies amounting to ₹ 8.78 crore in 734 cases, out of which ₹ 3.71 crore involved in 339 cases were pointed out during 2010-11 and the rest in earlier years. Out of the above, an amount of ₹ 3.86 crore has been collected.</p>
What we have highlighted in this Chapter	<p>In this chapter we present a performance audit on <b>‘Utilisation of declaration forms in inter-state trade’</b> containing important observations like delay in uploading data in TINXSYS, stock transfer of cardamom without verifying the genuineness of the transaction, evasion of tax due to misuse of declaration forms, functioning of inter-state investigation cell, involving a money value of ₹ 11.59 crore and a few illustrative cases involving ₹ 9.49 crore selected from observations like incorrect grant of exemption, application of incorrect rate of tax, incorrect availment of input tax credit, incorrect grant of refund, etc noticed during our test check of records in the assessment circles relating to assessment and collection of sales tax/value added tax, where we found that the provisions of the Acts/Rules were not observed.</p> <p>It is pertinent to mention that though similar omissions have been pointed out by us in earlier years, the Department had not taken corrective action though these mistakes continued as apparent from the records made available to us.</p>
Our conclusion	The Department needs to take rectificatory action in the cases pointed out by us and also to ensure that such mistakes may not occur again by strengthening internal controls including internal audit. In the interest of revenue, the Department may expedite collection of tax in accepted cases on priority.

CHAPTER II

SALES TAX/VALUE ADDED TAX

2.1 Tax administration

The assessment, levy and collection of sales tax, central sales tax and value added tax are governed by the erstwhile Tamil Nadu General Sales Tax Act, 1959 and the Rules made thereunder, the Central Sales Tax Act 1956 and the Rules made thereunder, the Tamil Nadu Value Added Tax Act, 2006 and the Tamil Nadu Value Added Tax Rules, 2007 respectively. The administration of the Department is vested with the Principal Secretary and the Commissioner of Commercial Taxes. The State has been divided into 40 zones, comprising 323 assessment circles including four Large Taxpayers<sup>2</sup> units at Chennai and two Fast Track Assessment Circles (FTAC) at Coimbatore. The assessment, levy and collection of tax are done by the assessing authorities in charge of the assessment circles. The monitoring and control at the Government level is done by the Secretary, Commercial Taxes and Registration Department.

2.2 Trend of receipts

Actual receipts from sales tax/value added tax during the last five years from 2006-07 to 2010-11 along with the total tax receipts during the same period are exhibited in the following table:

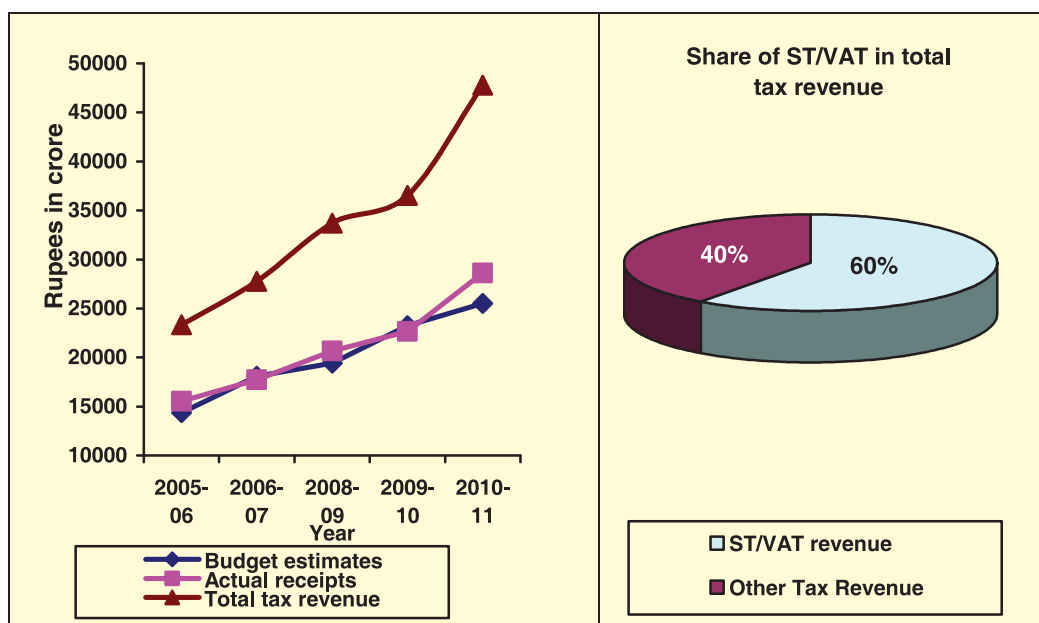
(₹ in crore)

Year	Budget estimates	Actuals	Variation excess (+)/ short fall (-)	Percentage of variation	Total tax receipts of the State	Percentage of actual receipts vis-à-vis total tax receipts
2006-07	18,089.66	17,727.16	(-) 362.50	(-) 2.00	27,771.15	64
2007-08	20,030.84	18,156.36	(-) 1,874.48	(-) 9.36	29,619.10	61
2008-09	19,417.74	20,674.70	(+) 1,256.96	(+) 6.47	33,684.37	61
2009-10	23,242.53	22,661.52	(-) 581.01	(-) 2.50	36,546.66	62
2010-11	25,504.65	28,614.23	(+) 3,109.58	(+) 12.19	47,782.17	60

A line graph of budget estimates, actual receipts and total receipts and a pie chart depicting the position of Sales Tax/VAT receipts in the total tax receipts are given in the following page:

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Large taxpayers unit – Dealers whose taxable turnover for a year exceeds ₹ 200 crore.



In 2010-11 the collection from sales tax/value added tax increased by 26 per cent over the previous year.

### 2.3 Analysis of arrears of revenue

As per the information furnished by the Department, the arrears of revenue as on 31 March 2011 along with the figures for the preceding four years are given in the following table:

₹ in crore)					
Year	Opening balance	Addition	Total	Amount collected* during the year	Closing balance
2006-07	10,507.52	1,554.31	12,061.83	1,089.19	10,972.64
2007-08	10,972.64	279.10	11,251.74	3,030.15	8,221.59
2008-09	8,221.59	2,429.37	10,650.96	779.61	9,871.35
2009-10	9,871.35	1,937.68	11,809.03	818.97	10,990.06
2010-11	10,990.06	211.61	11,201.67	1,069.33	10,132.34
*includes demands eliminated, waived and written off					

The arrears as on 31 March 2011 includes ₹ 5,598.76 crore outstanding for more than five years. Demands amounting to ₹ 2,288.84 crore were covered under the Revenue Recovery Act. Demands amounting to ₹ 1,894.07 crore were stayed by the Government/High Court and other judicial/appellate fora and an amount of ₹ 457.91 crore was held up due to rectification/review applications. A sum of ₹ 52.16 crore could not be recovered on account of assessee's becoming insolvent while a sum of ₹ 613.67 crore was likely to be written off/waived. An amount of ₹ 2,905.38 crore was covered under the deferral scheme. An amount of ₹ 596.55 crore was proposed to be eliminated. A sum of ₹ 651.16 crore was covered under civil suits and Board for Industrial and Financial Reconstruction and a sum of ₹ 672.60 crore was under various stages of recovery. Further as intimated by the Department an amount of ₹ 146.76 crore had since been collected between April and September 2011.



The above details indicate that the amount of uncollected revenue as on 31 March 2011 was nearly one third of the sales tax/VAT revenue realised by the Department during the year 2010-11 and substantial amounts were covered under the Revenue Recovery Act and on account of stays granted by the judicial/appellate fora.

**We recommend that special efforts be made to get the stay orders vacated and speed up the cases involved in litigation. We further recommend that the Government may consider fixing targets for collection of old arrears in a time bound manner and closely monitor the performance of the Departmental officers *vis-à-vis* the set targets.**

#### **2.4 Assessee profile**

The number of registered dealers in 2010-11 was 5,64,952 comprising 5,63,348 VAT dealers and 1,604 non-VAT dealers. Of the above, the large tax payers were 116 and the rest were classified as small tax payers. The number of dealers required to file returns during the year were 2,35,282 VAT dealers and 1,378 non-VAT dealers. The number of returns due from the dealers was 28,39,920 against which 21,41,454 returns were received. 6,87,515 and 10,951 returns were not received from VAT and non-VAT dealers respectively. These returns were due from 27,947 dealers.

The Department stated that notices were issued to non-filers of returns for cancellation of registration certificates. The details of the dealers whose registration certificates were cancelled for reason of non-filing of returns were, however, not made available to us.

#### **2.5 Collection of sales tax/VAT per assessee**

The details of amount of sales tax/value added tax realised during the year, the number of assessees and the collection of sales tax/value added tax per assessee for the period from 2006-07 to 2010-11 are given in the following table:

Year	No. of assessees	Revenue (₹ in crore)	Revenue per assessee (₹ in lakh)
2006-07	1,98,211	17,727.16	8.94
2007-08	2,24,074	18,156.36	8.10
2008-09	2,45,052	20,674.70	8.44
2009-10	2,70,159	22,661.52	8.39
2010-11	3,11,517	28,614.23	9.19

## **2.6 Arrears in assessment**

The number of cases pending for assessment at the beginning of the year 2010-11, due for assessment during the year, disposed during the year and pending at the end of the year 2010-11 along with the figures for the preceding four years as furnished by the Commercial Taxes Department are given in the following table:

Year	Opening balance	Cases which became due for assessment	Total	Cases disposed during the year	Cases pending at the end of the year	Percentage of disposal (Col.5 to 4)
1	2	3	4	5	6	7
2006-07	68,916	1,82,457	2,51,373	1,51,825	99,548	60
2007-08	99,548	1,78,414	2,77,962	76,814	2,01,148	28
VAT	---	1,44,759	1,44,759	22,108	1,22,651	15
2008-09	2,01,148	---	2,01,148	55,381	1,45,767	28
VAT	1,22,651	1,85,270	3,07,921	95,047	2,12,874	31
2009-10	1,45,767	---	1,45,767	84,600	61,167	58
VAT	2,12,874	2,21,166	4,34,040	1,14,638	3,19,402	26
2010-11	61,167	---	61,167	36,122	25,045	59
VAT	3,19,402	2,37,073	5,56,475	1,63,957	3,92,518	29

The low rate of disposal after the introduction of VAT has increased the pendency of assessments. Such a poor pace of finalisation of assessments is likely to affect the collection of tax adversely.

The Department attributed the low percentage of disposal to the vacancy in the posts of assessing authorities.

**We recommend that the Government may, by appropriate instructions, ensure completion of assessments expeditiously.**

## **2.7 Cost of collection**

The gross collection in respect of sales tax/VAT, expenditure incurred on collection and percentage of such expenditure to gross collection during the years 2008-09, 2009-10 and 2010-11 along with the relevant all India average percentage of expenditure on collection to gross collection for the previous years are given in the following table:

(₹ in crore)

Head of revenue	Year	Collection	Expenditure on collection of revenue	Percentage of expenditure on collection	All India average percentage for the previous years
Sales	2008-09	20,674.70	187.27	0.91	0.83
tax/	2009-10	22,661.52	205.10	0.91	0.88
VAT	2010-11	28,614.23	219.30	0.77	0.96

The above table indicates that while the percentage of expenditure on collection was more than the all India average for the years 2007-08 and 2008-09 it was less than the all India average for the year 2009-10.

## 2.8 Analysis of collection

The break-up of total collection at the pre-assessment stage and after regular assessment of taxes on sales under the Tamil Nadu Value Added Tax Act for the years 2008-09, 2009-10 and 2010-11 as furnished by the Department are given in the following table:

(₹ in crore)

Year	Amount collected at pre-assessment stage	Amount collected after regular assessment (additional demand)	Penalties for delay in payment of taxes	Amount refunded	Net collection as per department	Net collection as per Finance Account	Percentage of col. 2 to 7
1	2	3	4	5	6	7	8
2008-09	22,140.73	369.17	55.33	716.02	21,813.29	20,674.70	107
2009-10							
Sales	3,169.82	313.50					
Tax/			1,871.32	122.81	24,818.84	22,661.52	97
VAT	18,803.53	783.48					
2010-11							
Sales	4,442.83	89.03					
Tax/			86.88	625.58	30,491.00	28,614.23	108
VAT	26,399.77	98.07					

The collection of revenue at pre-assessment stage to the net collection was 108 *per cent* during 2010-11 as against 97 *per cent* in 2009-10.

## 2.9 Impact of Audit Reports

### 2.9.1 Revenue impact

During the last five years, we had pointed out through our Audit Reports non/short levy, non/short realisation, underassessment/loss of revenue, incorrect exemption, concealment/suppression of turnover, application of incorrect rate of tax, incorrect computation, etc., with revenue implication of ₹ 351.31 crore in 59 paragraphs. Of these, the Department/Government had accepted audit observations involving ₹ 29.34 crore and had since recovered ₹ 9.16 crore. The details are shown in the following table:

(₹ in crore)

Year of Audit Report	Paragraphs included		Accepted money value	Amount recovered
	Number	Money value		
2005-06	10	28.49	1.39	0.32
2006-07	10	64.54	12.16	0.69
2007-08	14	50.77	4.73	1.50
2008-09	12	72.52	3.12	0.96
2009-10	13	134.99	7.94	5.69
<b>Total</b>	<b>59</b>	<b>351.31</b>	<b>29.34</b>	<b>9.16</b>

The Government may institute a mechanism to monitor the position of recoveries pointed out in the Audit Reports and take necessary steps for early collection.

## **2.10 Amendments to the Acts/Rules/notification/order issued by the Government at the instance of audit**

As per Rule 11(2) of the TNVAT Rules, dealers who effected zero rated sales shall claim refund within 180 days from the date of accrual of such claim. Audit pointed out (para 2.2.13.1 of the Audit Report 2008-09) that the term “accrual of claim” has not been defined. The Government accepted the audit observation and amended the rule by substituting the term “from the date of making zero rate sale” for the term “from the date of accrual of such claim”.

## **2.11 Working of internal audit wing**

The internal audit is organised in each CT district and consists of an Assistant Commissioner, one Commercial Tax Officer and four other supporting staff. The assessments finalised and the refunds made in the preceding quarter were to be taken up for audit in the succeeding quarter. The details of the number of offices due for internal audit and those completed as furnished by the Department are given in the following table:

Year	Number of offices due	Number of offices completed	Balance	Percentage of col.3 to 2
1	2	3	4	5
2006-07	479	182	297	38
2007-08	452	173	279	38
2008-09	452	155	297	34
2009-10	452	133	319	29
2010-11	443	83	360	19

The Department attributed the reasons for non-coverage of internal audit to vacancy in staff strength and stated that audit in respect of assessments finalised by assessing officers who were due for retirement and in respect of cases which would become time barred were only being conducted.

We recommend that Government may consider directing the Department to strengthen the internal audit so that audit may be conducted for all the units due for audit.

### 2.12 Results of audit

We test checked the records of 225 units and found underassessment of tax and other irregularities amounting to ₹ 192.84 crore in 1,116 cases, which broadly fall under the following categories.

(₹ in crore)			
Sl. No.	Category	No. of cases	Amount
1	Utilisation of declaration forms in inter-state trade (A performance audit)	1	11.59
2	Incorrect exemption from levy of tax	190	116.44
3	Application of incorrect rate of tax	161	12.76
4	Incorrect computation of taxable turnover	85	11.85
5	Non/short levy of tax	100	7.62
6	Non-levy of penalty/interest	242	5.88
7	Incorrect allowance of input tax credit	286	7.62
8	Other observations	51	19.08
<b>Total</b>		<b>1,116</b>	<b>192.84</b>

During the course of the year 2010-11, the Department accepted underassessments and other deficiencies amounting to ₹ 8.78 crore in 734 cases, out of which ₹ 3.71 crore involved in 339 cases were pointed out during the year and the rest in earlier years. Out of the above, an amount of ₹ 3.86 crore has been collected.

After the issue of draft paragraphs the Department collected an amount of ₹ 37.04 lakh.

A performance audit on ‘Utilisation of declaration forms in inter-state trade’ involving ₹ 11.59 crore and a few illustrative cases involving ₹ 9.49 crore are mentioned in the following paragraphs:

## **2.13 Performance audit on ‘Utilisation of declaration forms in inter-state trade’**

### **Highlights**

- Delay in uploading details regarding utilisation of declaration forms in TINXSYS hampered the effective monitoring of inter-state trade.

**(Paragraph 2.13.8.2)**

- There was incorrect exemption on consignment sales of cardamom involving tax of ₹ 33.14 lakh.

**(Paragraph 2.13.10.1)**

- There was absence of mechanism to monitor the implementation of extract verification reports of ISIC.

**(Paragraph 2.13.10.1)**

- There was evasion of tax due to misuse of declaration forms to an extent of ₹ 1.85 crore.

**(Paragraph 2.13.11.1)**

- Incorrect allowance of concessional rate of tax resulted in short levy of tax amounting to ₹ 2.10 crore.

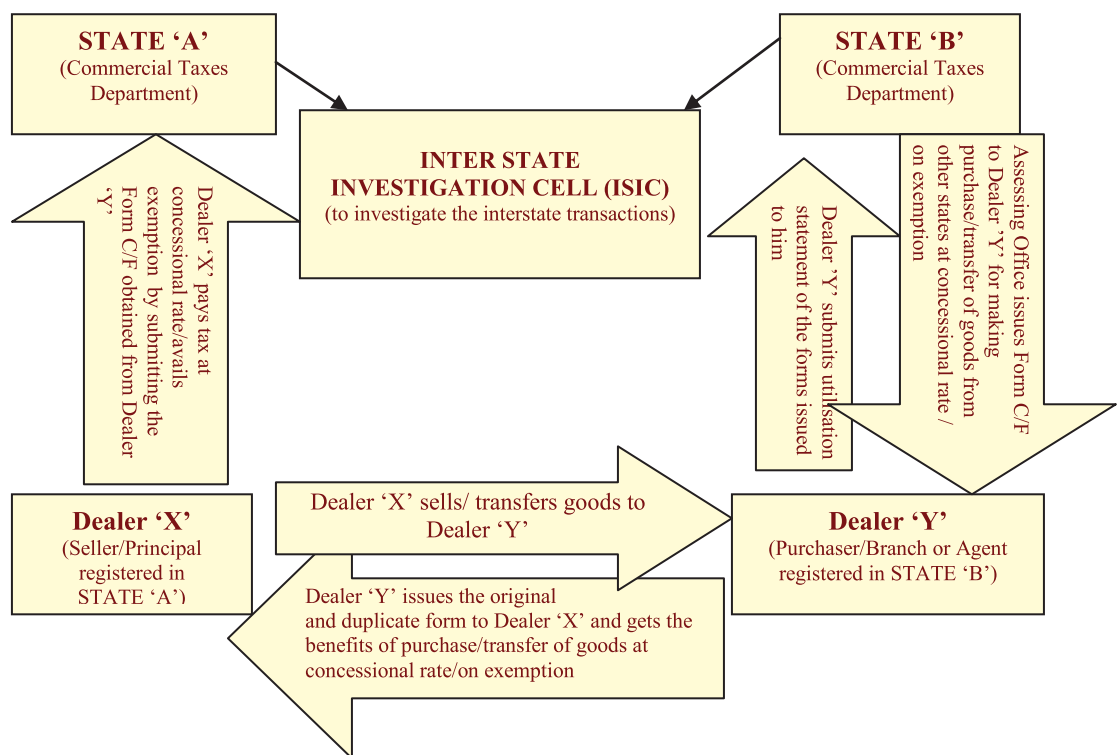
**(Paragraph 2.13.11.4)**

- 8,322 ‘C’ and 1,060 ‘F’ declaration forms were issued to 792 dealers after the cancellation of the registration certificates/stoppage of business.

**(Paragraph 2.13.13.1)**

### **2.13.1 Introduction**

Under the Central Sales Tax Act, 1956, (CST Act) and the Rules made thereunder, every dealer, who in the course of inter-state trade or commerce, sells goods to a registered dealer shall pay tax at a concessional rate, if such sales are supported by declarations in form ‘C’ obtained from the purchaser. The dealers can purchase goods at concessional rate of tax for the purposes of resale, use in manufacture or processing of goods for sale, use in mining, use in generation/distribution of power and packing of goods for sale/resale, provided those goods are specified in their certificate of registration. Transfer of goods claimed otherwise than by way of sale made by a registered dealer to any other place of his business located outside the state is exempted from tax on production of the declarations in form ‘F’ duly filled in and signed by the principal officer of other place of his business or his agent as the case may be. Form ‘F’ declarations are issued for receiving/sending goods on stock transfer either from/to their depot/branch/principal/agent in other states for eventual sale in the respective states. These incentives are given to the dealers for furtherance of trade and commerce. The steps involved in these transactions are shown in the following illustration:



It is the responsibility of the Commercial Taxes Department to ensure proper accounting of declaration forms and to take adequate safeguard against misuse of declaration forms. The Government of India designed a website – “TINXSYS (Tax Information Exchange System)”, as a repository of inter-state transactions. It helps the Department to effectively monitor the inter-state trade.

### 2.13.2 Organisational set up

The Secretary, Commercial Taxes and Registration Department is the head at the Government level. The Commissioner of Commercial Taxes is the head of the Commercial Taxes Department and is assisted by the Additional Commissioners, Joint Commissioners and Deputy Commissioners who exercise administrative control. The Deputy Commissioners of Large Taxpayers Units/Fast Track Assessment Circles, Assistant Commissioners, Commercial Tax Officers and Assistant Commercial Tax Officers are the assessing authorities. They are the custodians of the declaration forms and competent to issue the forms to the dealers. The Commercial Taxes Department is divided into 10 divisions, each headed by a Joint Commissioner, under whose control there are 323 assessment circles. Further, there is an Inter State Investigation Cell (ISIC) headed by a Joint Commissioner (CT), who is under the direct control of the Commissioner of Commercial Taxes, for carrying out the verification of inter-state transactions.



### **2.13.3 Audit objectives**

The performance audit was conducted with a view to ascertain whether

- there exists a foolproof system for custody and issue of the declaration forms;
- exemption/concession of tax granted by the assessing authorities was supported by valid/original declaration forms;
- there is a system for ascertaining genuineness of the forms for preventing evasion of tax;
- there is a system of uploading the particulars in the TINXSYS website and the data available therein is utilised for verifying the correctness of the forms; and
- there exists an adequate internal control mechanism for preventing leakage of revenue.

### **2.13.4 Scope and methodology of audit**

The performance audit was conducted in three phases, during the period from November 2010 to July 2011 to ascertain the accounting of the declaration forms and correctness of the concessions and exemptions allowed to the dealers under the CST Act. The scope of the performance audit was limited to only 'C' and 'F' forms.

In the first phase, details of declaration forms regarding inter-state sales and branch/stock transfers in respect of assessments finalised during the period from 2007-08 to 2009-10 were collected from the assessment circles in Tamil Nadu, segregated with reference to States/Union Territories to which they relate and forwarded to the concerned Accountants General offices for verifying the genuineness/correctness of the transactions.

In the second phase, details of declaration forms received were verified with reference to purchase/sales details available in the respective assessment circles.

In the third phase, based on the verification reports received from other Accountants General offices, observations were made by verifying the assessment records of the assessees in Tamil Nadu.

### **2.13.5 Acknowledgement**

The Indian Audit and Accounts Department acknowledges the co-operation of the Commercial Taxes Department and the Directorate of Stationery and Printing, Chennai, in providing the necessary information and records for the performance audit. An entry conference was held in November 2010 with the Additional Commissioner of Commercial Taxes (Audit) in which the audit objectives and methodology of audit were explained. The draft performance audit report was forwarded to the Government and the Department in September 2011. An exit conference was held in September 2011 with the Secretary to the Government, Commercial Taxes Department. The views expressed by the Department at the exit conference and at other times were considered and suitably incorporated in the performance audit.



**2.13.6 Trend of revenue**

The budget estimates as well as the actual collection of central sales tax for the last five years, as intimated by the Department, are given in the following table:

Year	CST collection				(₹ in crore)	
	Budget estimates	Actuals	Variation excess (+)/ short-fall (-)	Percentage of variation excess (+)/ shortfall (-)	Total tax collection	Percentage of CST collection on total tax collection
2006-07	1,808.66	2,261.91	(+) 453.25	(+) 25.06	27,771.15	8.14
2007-08	1,958.93	1,722.24	(-) 236.69	(-) 12.08	29,619.10	5.81
2008-09	1,277.00	1,645.65	(+) 368.65	(+) 28.87	33,684.37	4.89
2009-10	1,193.51	1,675.78	(+) 482.17	(+) 40.40	36,546.66	4.59
2010-11	1,865.70	2,250.67	(+) 383.97	(+) 20.58	47,782.17	4.71

According to Paragraph 27 of Chapter II of the Tamil Nadu Budget Manual (Volume-I), the aim of the preparation of the budget is to achieve as close an approximation to the actual as possible. We observed that the budget estimate for the year 2010-11 was prepared by adding a growth rate of 10 *per cent* to the revised budget estimate of 2009-10 and was fixed at ₹ 1,865.70 crore, whereas the actual collection was ₹ 2,250.67 crore showing an increase of 21 *per cent*. This indicates that the preparation of budget estimates was not realistic. The details relating to preparation of budget estimates for earlier periods and the reasons for variation between budget estimates and actuals, though called for (November 2011), were not furnished by the Department (December 2011).

**Audit findings****System deficiencies****2.13.7 Printing, distribution and safe custody of declaration forms**

The declaration forms are printed at the Government printing press by the Director of Stationery and Printing, Government of Tamil Nadu. Based on the annual requirement of declaration forms gathered from the individual assessment circles, the Joint Commissioner (Administration) places indents for supply of these forms. The supply of forms is made by the Director of Stationery and Printing to the Joint Commissioners of all divisions, as per the advice of the Joint Commissioner (Chennai Division) who has been authorised, by the Commissioner, to coordinate the distribution of forms. The Deputy Commissioners receive the forms from the divisions and distribute them to the assessment circles under his/her jurisdiction. The forms are kept under the safe custody in the assessment circles. During the period from April 2006 to March 2010, 50 lakh 'C' forms were printed and distributed to the assessment circles, according to their requirements. No 'F' forms were printed during the period of performance audit and 'F' forms were issued to the dealers out of the available stock.

### **2.13.7.1 Maintenance of stock register**

As per Standing Order 86 of the Tamil Nadu Commercial Taxes Manual Volume II, each assessing authority shall maintain a Stock Register in Form 89 for accounting the receipt of declaration forms from the Territorial Deputy Commissioners and issue of the forms to the dealers. Issue Register in Form 90 shall also be maintained by the assessing authority to record dealer-wise details of issue of forms. The format of the Issue Register is such that whenever declaration forms are indented by the dealers, the assessing authority should check the utilisation of declaration forms received by the dealers earlier before issuing fresh forms to them.

We noticed during test check in 17 assessment circles<sup>3</sup> that the assessing authorities maintained only one register for accounting both stock and issue of declaration forms. The format of the register was also not uniform and different formats were adopted in different circles. As the registers were not maintained in the prescribed format, audit could not ensure whether the assessing officers exercised necessary checks before issuing declaration forms to the dealers.

**We recommend that Government may consider issuing suitable instructions to the Department to maintain the stock and issue registers in the prescribed format to ensure proper control over the issue of declaration forms.**

### **2.13.8 Tax Information Exchange System**

The Empowered Committee of State Finance Ministers authored a website named TINXSYS (Tax Information Exchange System) as a repository of inter-state transactions. This is mainly aimed at helping the Commercial Taxes Department to effectively monitor the inter-state trade.

The dealers information, viz., name, CST number, TIN, address, date of registration under CST Act and status of registration under the CST Act are entered into the system. Further, details of issue/ utilisation of forms are also being entered. The details of utilisation of declaration forms are initially uploaded in 'xls' format by the

assessment circles to the client server of the computer centre and from there, the data is converted into 'txt' format and uploaded in the TINXSYS server. Apart from verification of dealers profile, the Department officials use TINXSYS for verification of statutory forms issued by other State Commercial Taxes Departments to their assesseees and used by the dealers in inter-state transactions.

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<sup>3</sup> Adyar-I, Gandhi Market, Guindy, Hosur(North), Hosur(South), Koyambedu, Mannady (East), Mailamchandai-I, Mailamchandai-II, Nagercoil (Town), Pudukottai-I, Rock Fort, Srirangam, Thiruverumbur, Tiruvarur, Vepery and Woraiyur.

**2.13.8.1 Deficiency in the format**

The serial number of declaration forms is in alphanumeric format. While the alphabetic values denote the State code and series of the forms, the numerical value denotes the year of printing and serial number. We noticed that uniformity in assigning the serial number of declaration forms was not maintained by various State Governments and the state code, year, alphabetical series and numerical value are separated either by space or special characters like 'hyphen' or slash. In TINXSYS, only two input boxes were provided for entering series and serial number respectively. We observed that while uploading the details, in most of the cases the series of the forms were not entered in the input box as printed in the forms, that is, with 'hyphen' or 'slash' or space, as the case may be. As a result, in many instances the TINXSYS gives a message as 'no matching record available', even though the correct series and numerical value, as mentioned in the declaration forms are fed in the website for making verification of the usage of the particular forms.

**We recommend that separate input boxes should be provided in TINXSYS to enter state code, year and alphabetical series to avoid mistakes in feeding the details.**

**2.13.8.2 Delay in uploading the data**

The details regarding the number of 'C' and 'F' declaration forms issued to the dealers and the utilisation of those forms as available in the TINXSYS website indicated that as against the issue of 39,25,212 forms during the period from 2007-08 to 2010-11, details of utilisation of only 3,40,565 forms were uploaded in the website as on 31 March 2011.

The number of utilised declaration forms uploaded on TINXSYS was very low when compared to the number of declaration forms issued during the period of performance audit as shown in the following table:

Year	Number of forms issued	Number of forms for which utilisation details were uploaded
2007-08	10,21,561	13,580
2008-09	13,98,783	59,616
2009-10	9,81,684	1,50,946
2010-11	5,23,178	1,16,423

After we pointed this out, the Department replied that online software was rolled out during September 2009 and M/s. 3i Infotech Ltd. was requested to develop the interface between the CT server and TINXSYS server for data transfer. The module was developed by M/s. 3i Infotech Ltd. only after one year. Hence uploading the utilisation data from the server was delayed.

TINXSYS provides a platform for exchange of information on inter-state transactions among the States and it helps to ascertain the correctness of claim of concessional rate and exemption from levy of tax by the dealers. The delay/omission to upload the details of utilisation of forms would defeat the

very purpose of the creation of the website, viz., effective monitoring of inter-state trade.

### **2.13.9 Functioning of Inter-State Investigation Cell**

**2.13.9.1** The Inter-State Investigation Cell (ISIC) was formed with effect from 1 April 1975 with two Deputy Commercial Tax Officers under the control of the Deputy Commissioner (Intelligence). It has been functioning independently since 1987 with the Deputy Commissioner (now Joint Commissioner) as its head under the direct control of the Commissioner of Commercial Taxes. There are four groups in the ISIC and each group consists of one Commercial Tax Officer and one Assistant Commercial Tax Officer. The main functions of the ISIC include the following:

- Investigation and inspection of transactions which are of inter-state trade in nature;
- Verification of the existence of dealers including agents and branches situated outside the State and actual receipt, storage and sales of goods by them;
- Verification of the genuineness of the declaration forms obtained from other State dealers and
- Investigation outside the State of doubtful cases of inter-state sales, consignment sales or branch transfers referred by the assessing authorities.

Cases of inter-state transactions are referred to ISIC by the Commercial Tax Departments of other states and the assessment circles in Tamil Nadu for verification of the genuineness of the transactions in the form of Extracts Verification (EVs). The extracts received from other states are verified by the ISIC in the concerned assessment circles in the state and the results are communicated to respective states. Similarly, inter-state transactions referred by the assessment circles in the state are forwarded to the Investigative Wings of other states for verification. In some cases, the officials of ISIC are also visiting other states for verifying the genuineness of the transactions.

The ISIC had disposed of 5,919 EVs during the period from April 2006 to March 2010. These consisted of both inward and outward extracts<sup>4</sup> received for verification. Separate details of inward and outward extracts disposed of each year with money value were not made available to audit.

The disposal of cases by the ISIC for the years from 2006-07 to 2009-10 are given in the following table:

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<sup>4</sup> **Inward Extract** : Extracts containing details of transactions made by the dealers in other States received from those States for verification in Tamil Nadu  
**Outward Extract** : Extracts containing details of transactions, effected by the dealers in Tamil Nadu with the dealers in other States, sent to the counterparts of the respective States for verification

Year	Opening balance	No. of EVs received	Total	No. of EVs disposed off	Closing balance	Percentage of disposal
2006-07	1,942	1,576	3,518	1,594	1,924	45.30
2007-08	1,924	1,228	3,152	1,523	1,629	48.31
2008-09	1,629	1,776	3,405	1,506	1,899	44.22
2009-10	1,899	1,730	3,629	1,296	2,333	35.71

The pendency position of extracts verification as on 31 March 2010 is given in the following table:

	No of EVs	Percentage of pendency	Revenue (₹ in crore)
Less than six months	627	26.87	290.17
Six months and above but less than one year	405	17.36	214.66
One year and above but less than two years	641	27.47	96.13
Two years and above	661	28.33	113.95
<b>Total</b>	<b>2,333</b>		<b>714.91</b>

The Commissioner of Commercial Taxes, Chennai had neither fixed targets for extracts verification nor a time limit for the disposal of the cases. During the exit conference, the Department stated that fixing time limit for verification of transactions and disposal of cases on first in first out basis would be considered.

#### **2.13.9.2 Communication of bogus transactions**

As per the guidelines dated 24 December 1990 issued by the Commissioner of Commercial Taxes, if on verification, the ISIC found any party residing outside the state to be bogus, the ISIC should not confine itself to the transactions referred to it but the details of such bogus dealers should be communicated to all Joint Commissioners within the state in order to ensure realisation of revenue in similar transactions.

The details of such references called for from the Department were not made available to audit. In view of this, audit could not ensure whether the guidelines issued by the Commissioner of Commercial Taxes were adhered to in this regard.

#### **Compliance deficiencies**

#### **2.13.10 Stock transfer of cardamom**

Audit scrutiny on earlier occasions on the transactions of consignment sales of cardamom revealed non-existence of the agents in other States and consequent evasion of tax in many cases. We commented on this issue in the Audit Reports for the years 2004-05 and 2008-09. In respect of the cases included in the Audit Report for the year 2004-05, the Government replied that action was initiated to revise the assessments.



**2.13.10.1** We noticed in Bodinayakanur assessment circle that the assessing authority, while finalising the assessments of 13 dealers for the years 2004-05 and 2005-06 between April 2007 and December 2007 allowed exemption on a turnover of ₹ 88.84 crore being stock transfer of cardamom to other states on the strength of 114 form 'F' declarations filed by the dealers. The assessing authority forwarded the details of 'F' form declarations in June 2008 to ISIC through Joint Commissioner (Enforcement), Madurai for verification. However, we observed that no such reference was received by the JC (Enforcement) Madurai and as such the genuineness of those transactions were not verified by the ISIC.

Independent verification made by us with Maharashtra and West Bengal sales tax authorities revealed that five declaration forms produced by four assesseees for claiming exemption on consignment sales of ₹ 3.31 crore were bogus as the forms were not issued by the concerned authorities in Nagpur and Kolkata, where the goods were stated to have been sent on stock transfer basis. The tax involved in the above transactions worked out to ₹ 33.14 lakh. Omission on the part of the assessing authorities in cross verifying the genuineness of the transactions while finalising the assessments resulted in evasion of tax.

The ISIC undertakes investigation on the genuineness of inter-state transaction of the dealers based on the EVs received by them and forwards the result of such investigations to the concerned assessment circles for implementation. During the period from 2005-06 to 2009-10, they detected 58 deficiencies<sup>5</sup> pertaining to 29 assesseees and stated to have forwarded the details to the respective assessment circles, which included 12 deficiencies relating to Bodinayakanur assessment circle.

We, however, noticed in Bodinayakanur assessment circle, that the reports relating to three bogus claims of consignment sales of cardamom amounting to ₹ 46.45 lakh by two dealers sent by the ISIC (January 2008 and July 2009) were stated to have not been received by the assessing authority and as such were not acted upon by them (April 2011). This indicates that the Department did not have any system to monitor the implementation of the verification reports sent by the ISIC.

**We recommend that the Government may consider issuing suitable instructions insisting upon the dealers to submit form 'F' declarations along with monthly returns for claiming exemption. The genuineness of the doubtful transactions should also be verified before finalising the assessments.**

**We also recommend that a suitable monitoring mechanism should be evolved to ensure implementation of the verification reports forwarded by the ISIC to avoid loss of revenue due to non-implementation of the reports.**

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<sup>5</sup> Deficiencies include bogus 'C'/'F' forms, declaration forms not issued to the concerned dealer, purchases not accounted for, etc.

**2.13.10.2** We noticed in Bodinayakanur assessment circle that based on the D3 proposals<sup>6</sup>, the assessments in respect of eight dealers in cardamom were finalised for the years 2002-03 to 2005-06 and a demand of ₹ 6.35 crore was raised between August 2007 and August 2008. However, assessment orders could not be served as the dealers had closed their business and were not available at the addresses mentioned in the registration certificates. Though, under the proviso to the Rule 12(5) of the Central Sales Tax (Registration and Turnover) Rules 1957, it was mandatory that each form 'F' shall cover only transactions effected during the period of one calendar month, the assessing officer did not insist on production of form 'F' along with monthly returns and cross verify the genuineness of the transactions. The failure of the assessing officer to cross verify the transactions through ISIC before finalising the assessments resulted in non-realisation of revenue of ₹ 6.35 crore.

### **2.13.11 Results of cross verification**

We carried out cross verifications of declaration forms issued by the dealers in Tamil Nadu for the inter-state purchases as well as for the sales effected by them against declaration forms to other state dealers, with a view to ascertain the accountability and its genuineness. The results of such cross verifications are discussed in the following paragraphs:

#### **2.13.11.1 Evasion of tax due to misuse of declaration forms**

We noticed during verification of the details of five 'C' forms and 45 'F' forms used for the purchase of goods at concessional rate/receipt of goods on stock transfer from other states, by 18 dealers registered in 15 assessment circles<sup>7</sup> that the declaration forms were not issued to the concerned dealers. Thus, purchase of goods has been made by the dealers using invalid declaration forms. This resulted in non-accounting of these purchases and consequent suppression of sales amounting to ₹ 18.24 crore by these dealers. The tax and penalty involved worked out to ₹ 74.04 lakh and ₹ 111.07 lakh respectively.

#### **2.13.11.2 Non/short accounting of goods purchased by issue of declaration forms**

- We noticed during cross verification of the details of five declaration forms received from Odisha and Rajasthan with the VAT returns of the assesseees available in Nagercoil (Rural) and Thucklay assessment circles that two dealers had not accounted for the purchase of goods, made during 2007-08 and 2008-09, valued at ₹ 2.80 crore. This resulted in suppression of corresponding sales turnover of ₹ 3.08 crore involving tax and penalty of ₹ 57.29 lakh.

<sup>6</sup> The findings of the inspections conducted by the enforcement wing are forwarded to the concerned assessing authority for implementation, in the form of D3 proposals.

<sup>7</sup> Arisipalayam, Bhavani, Chengalpet, Dindigul-I, Lei Bazar, Madurai (Rural South), Mylapore, Nagercoil(Rural), Palani-I, Porur, Salem(Rural), Tirupattur, Tirupur (Rural), Tiruvannamalai and Vellore (South).

- We noticed during cross verification of the details of five declaration forms received from Rajasthan with the assessment records available in Nagercoil (Tower Junction) assessment circle that a dealer, who purchased marble from Rajasthan by issuing 'C' form declarations had understated the purchase value of the goods to an extent of ₹ 31.74 lakh. This resulted in consequent suppression of sales turnover of ₹ 34.91 lakh involving tax and penalty of ₹ 10.99 lakh.

### **2.13.11.3 Acceptance of defective 'C' declaration forms**

Under the CST Act, tax is leviable at concessional rate on inter-state sale of goods, if such sales are covered by valid declarations in Form 'C'.

defective as the registration number of the purchasing dealer was not mentioned in the declaration forms. Thus, the exemption allowed/short levy of tax on inter-state sale of goods valued at ₹ 1.88 crore by accepting the defective 'C' form declarations resulted in non/short levy of tax amounting to ₹ 19.65 lakh. Accepting the audit observation, the Department revised the assessment (December 2011) in respect of the assessee in Egmore I assessment circle. We are awaiting the reply in respect of the other case (December 2011).

As per second proviso to Rule 12(1) of the Central Sales Tax (Registration and Turnover) Rules, 1957, a single declaration in form 'C' may cover all transactions of sales which take place in a quarter of a financial year.

As per first proviso to Rule 12(5) of the Central Sales Tax (Registration and Turnover) Rules, 1957, a single declaration in form 'F' may cover transfer of goods by a dealer to any other place of his business or to his agent or principal, effected during a period of one calendar month.

- We noticed during scrutiny of assessment records in Periamedu and Egmore I assessment circles that four declaration forms filed by two dealers were found to be

• We noticed in 14 assessment circles<sup>8</sup> that in respect of 35 assesseees, 73 'C' form declarations covering transactions pertaining to more than one quarter were accepted and tax was levied at the concessional rate on the entire turnover of ₹ 18.70 crore, instead of restricting the concessional levy to the transactions relating to one quarter only. Similarly, in six

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<sup>8</sup> Ambattur, Annasalai-I, Annasalai-III, Chepauk, Egmore-I, Egmore-II, Korattur, Mettupalayam Road, Nagercoil (Rural), Periamedu, Royapuram, Tondiarpet, Vepery and Villivakkam.



assessment circles<sup>9</sup>, in respect of 17 assesseees, 72 'F' declaration forms covering transactions of more than one month for ₹ 87.40 crore were accepted and exemption was allowed, instead of restricting the exemption to transactions relating to a single month.

#### 2.13.11.4 Incorrect allowance of concessional rate of tax

Under the CST Act, tax is leviable at concessional rate on inter-state sale of goods, if such sales are covered by valid declarations in form 'C'.

- We noticed during scrutiny of assessment records in FTAC-II, Coimbatore and Egmore II assessment circles that in respect of two dealers, the sales turnover of ₹ 13.24 crore was not covered by declarations in form 'C'. However, the above sales

turnover was allowed concessional rate of tax which resulted in short levy of tax of ₹ 80.42 lakh.

- We noticed during cross verification of declaration forms issued by dealers in Andhra Pradesh and Maharashtra in respect of sales effected by 16 dealers registered in 12 assessment circles<sup>10</sup> in Tamil Nadu that 29 declaration forms were found to be defective, as the declaration forms were found not to have been issued by the concerned sales tax authorities. This resulted in incorrect grant of concessional rate of tax on the sales turnover of ₹ 17.74 crore involving tax of ₹ 1.30 crore.

#### 2.13.11.5 Incorrect grant of exemption on consignment sales

We observed during scrutiny of the assessment file relating to a dealer registered in Godown assessment circle, that the exemption granted on the consignment sales of dhal (pulses) was covered by two defective 'F' forms as the assessing authority in Kadapa assessment circle, Andhra Pradesh, under whose jurisdiction the buyer was an assessee, had stated that the declaration forms were not issued by them. Thus, the incorrect grant of exemption on a turnover of ₹ 57.85 lakh resulted in non-levy of tax of ₹ 4.63 lakh.

<sup>9</sup> Bodinayakanur, Nagercoil (Rural), Peddunaickenpet (North), Tiruppur (South), Vepery and Villivakkam,

<sup>10</sup> Chepauk, Egmore I, FTAC-II (Coimbatore), Ganapathy, Guindy, Mettupalayam Road, Nagercoil (Rural), P.N. Palayam, Sivakasi-IV, Tiruppur (South), Triplicane-I and Villivakkam

**2.13.11.6 Non-levy of penalty for misuse of 'C' form**

Under the CST Act, a registered dealer buying goods from other states is entitled to a concessional rate of tax of four *per cent*, provided he furnishes to the seller, a declaration in form 'C'. If the goods indicated in the declarations are not covered by the certificate of registration, or if the dealer fails to make use of the goods for the purpose for which it was purchased at concessional rate, the dealer renders himself liable to penalty not exceeding one and half times of the tax due.

₹ 3.06 lakh, was leviable.

In Thiruthuraipoondi assessment circle, during 2007-08 a dealer had purchased from a dealer in Goa, optical fibre cable amounting to ₹ 51.05 lakh by using 'C' declaration form though the commodity was not included in the registration certificate. Hence the assessee was not eligible to purchase the goods against issue of 'C' form declaration. For misuse of declaration form, penalty of

**2.13.12 Absence of mechanism to monitor inter-state movements of petroleum products**

According to Section 3(a) of the CST Act, a sale or purchase of goods shall be deemed to have taken place in the course of inter-state trade or commerce, if the sale or purchase occasions the movement of goods from one state to another.

We undertook a study on the adequacy and effectiveness of the system for monitoring the inter-state transaction of major oil companies, in order to safeguard the revenue interest of the state.

Accordingly, we cross verified the inter-state sale of petroleum products effected by two dealers

during the years from 2007-08 to 2009-10 to the 68 purchasing dealers in Puducherry with the records maintained in the Commercial Taxes check posts situated at the border of the Union Territory of Puducherry to ascertain the actual movement of petroleum products out of this State.

We noticed from the details captured in the check post module and the movement registers maintained at the check posts that except a few transactions, all other transactions relating to inter-state sale of petroleum products declared to have been transported to the Union Territory of Puducherry have not been recorded in the check posts registers in evidence of the movement of the vehicles, suggesting that the entire goods had not moved out of the state.

The information regarding the consignment of petroleum products to the Union Territory of Puducherry and the number of movements recorded in the check posts in respect of two oil companies for the years from 2007-08 to 2009-10 are given in the following table:

Name of the Oil company	Movement of goods to the UT of Puducherry		Entries as per check post records	
	Number of consignments	Value (₹ in crore)	Number of consignments.	Value (₹ in crore)
M/s Indian Oil Corporation Limited	30,862	1,170.64	383	14.63
M/s Bharat Petroleum Corporation Limited	17,491	754.26	753	102.09

We drew the attention of the Department/Government in September 2010 and June 2011 to the possibility of the goods having been sold within Tamil Nadu and the local sales camouflaged as inter-state sales, taking advantage of the huge difference in tax rates<sup>11</sup> of petroleum products prevailing in this State and in the UT of Puducherry.

The Enforcement Wing of the Commercial Taxes Department, in pursuance of our audit observation and based on the instructions of the Principal Secretary and the Commissioner of Commercial Taxes, undertook surprise checks on the movement of oil tankers bound for Puducherry during October/November 2010 and found that out of 26 oil tankers that were transporting diesel/motor spirits, 24 vehicles had not crossed the border check posts of Tamil Nadu. The Enforcement Wing also collected, by way of tax and compounding fee, a sum of ₹ 14.28 lakh during surprise checks undertaken by them, apart from noticing instances of book stock exceeding tank capacity and cases of abnormal daily sales figures in the daily sales records maintained at the outlets located in the UT of Puducherry.

Further, the Government accepting (May 2011) our audit observation regarding the diversionary trade practices indulged in by the petroleum dealers, introduced 'Transit Pass' system by bringing the commodities petrol, high speed diesel oil and light diesel oil under the Sixth Schedule to the TNVAT Act 2006 to curb the menace of mid-dropping.

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	Tamil Nadu		Puducherry	
	Period	Rate	Period	Rate
Diesel Oil	1.4.2007 to 5.6.2008	23.43 %	1.4.2007 to 6.11.2009	12.5 %
	From 6.6.2008	21.43 %	From 7.11.2009	14 %
Petrol	From 1.4.2007	30 %	1.4.2007 to 6.11.2009	12.5 %
			From 7.11.2009	15 %

### **2.13.13 Other points of interest**

#### **2.13.13.1 Irregular issue of declaration forms**

As per Rule 10(1) of the CST (Tamil Nadu) Rules, 1957 declaration forms can be issued only to the registered dealers. Once the registration certificate (RC) is cancelled, the dealer becomes an unregistered dealer.

Rule 10(6) of the rules *ibid* provides that unused declaration forms remaining in stock with a registered dealer on the cancellation of his registration certificate or on the stoppage of his business shall be surrendered to the registering authority within seven days from the date of receipt of the order of cancellation or the date of stoppage of business.

A scrutiny of details regarding issue of declaration forms and data relating to cancelled RCs/stopped business cases available with the Department revealed that 8,322 'C' form and 1,060 'F' form declarations were issued to 792 dealers, in 226 assessment circles, subsequent to the date of cancellation of their RCs, against the rule provisions.

After this was pointed out, the Department stated that the issue of

declaration forms was in respect of transactions completed by the dealers prior to the cancellation of RCs. The reply is not tenable since the declaration forms issued to the dealers after the cancellation of the RCs is not in conformity with the rules.

#### **2.13.14 Conclusion**

The performance audit revealed that though standard formats have been prescribed to maintain stock and issue register, these were not maintained properly. There was delay in uploading the details of utilisation of declaration forms issued to the dealers on the TINXSYS website defeating the purpose of the creation of the website. Exemption was allowed on consignment sales of cardamom without verifying the genuineness of the transactions though it has been identified as evasion prone commodity. No time frame has been fixed for verification of transactions referred to ISIC. There is no follow up on implementation of EV reports sent by ISIC. Concessions/exemptions were allowed against invalid and defective forms. While allowing such benefits, the genuineness of the transactions was not checked. Declaration forms were issued to the dealers subsequent to the cancellation of their registration certificates against the provisions of the rules.

#### **2.13.15 Recommendations**

The Government may consider

- evolving a system to arrest the leakage of revenue in respect of exemptions claimed on inter-state sales of goods like cardamom in the guise of consignment sales/stock transfer;

- evolving a suitable monitoring mechanism to ensure implementation of the verification reports forwarded by the ISIC;
- fixing a time limit for verifying the genuineness of transactions referred to ISIC; and
- introducing a system of issuing online declaration forms which would facilitate updation of details without delay in the TINXSYS website.

## **2.14 Other audit observations**

*We scrutinised the records in the offices of the Commercial Taxes Department and noticed several cases of non-observance of the provisions of the Acts/Rules, resulting in application of incorrect rates of tax, incorrect grant of exemption, non-reversal of input tax credit wrongly allowed, non/short levy of interest/penalty and other cases as mentioned in the succeeding paragraphs in this chapter. These cases are illustrative and based on test checks carried out by us. Although such omissions are pointed out every year, the irregularities persist and remain undetected till the next audit is conducted. There is a need for the Government to consider directing the Department to improve the internal control systems including strengthening of internal audit so that such omissions can be avoided, detected and corrected.*

## **2.15 Non-compliance of the provisions of the VAT Act/Rules**

*The Tamil Nadu Value Added Tax (TNVAT) Act and the Rules made thereunder provide for:*

- (i) reversal of tax where input tax credit was allowed wrongly and levy of penalty;*
- (ii) furnishing of monthly returns within the prescribed period and payment of the admitted tax along with the returns and in case of default, the payment of penalty/interest at the rates prescribed in the Act; and*
- (iii) levy of interest on delayed payment of tax deducted at source into the Government account.*

*We noticed non-compliance of the provisions of the Act/Rules in some cases involving non/short realisation of ₹1.57 crore. These cases are mentioned in paragraphs 2.15.1 to 2.15.4.*

### **2.15.1 Incorrect availment of Input Tax Credit**

Under Section 19(1) of the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act), a registered dealer shall be entitled to input tax credit (ITC) of the amount of tax paid or payable under the Act to the seller on his purchase of taxable goods specified in the first schedule.

As per Section 27(2) of the Act where the ITC has been availed wrongly, the assessing authority shall reverse the ITC availed and determine the tax due. Section 27(4)(i) of the Act provides that in addition to the tax so determined, the assessing officer shall levy penalty at 50 *per cent* of the tax due in the case of the first such detection and 100 *per cent* in the case of second or subsequent detections.

#### **2.15.1.1 Non-reversal of ITC**

*Under Section 19(5)(a) of the TNVAT Act, 2006, no input tax credit shall be allowed in respect of sale of goods exempted under Section 15 of the TNVAT Act, 2006.*

- We noticed (March/May 2010) during test check of the assessment records in Kilpauk assessment circle, Chennai, and Kongunagar



assessment circle, Tiruppur, that two assesseees availed ITC on purchases though they effected sales of exempted goods also during the year 2006-07. The proportionate ITC attributable to the sale of exempted goods was not reversed. This resulted in non-reversal of ITC and non-levy of penalty amounting to ₹ 13.32 lakh and ₹ 6.66 lakh respectively.

After we pointed this (May/October 2010) out, the Department reversed the ITC (May 2010) in respect of the dealer in Kongunagar assessment circle. We are awaiting the reply from the Department in respect of the dealer in Kilpauk assessment circle (December 2011).

Under Section 19(20) of the TNVAT Act, 2006, where any registered dealer sells goods at a price lesser than the price of the goods purchased by him, the amount of the ITC over and above the output tax of those goods shall be reversed.

- In FTAC-IV (now LTU-IV) assessment circle, Chennai, we noticed (March 2011) that a dealer sold superior kerosene oil, during the year 2006-07, through public distribution system for a value lesser than the purchase price paid by him. The ITC over and above the output tax, amounting to ₹ 10.53 lakh, was required to be reversed and a penalty

of ₹ 5.27 lakh was also to be levied, which was not done.

We pointed this (March 2011) out to the Department and are awaiting their reply (December 2011).

#### **2.15.1.2 Allowance of ITC on purchases made from unregistered dealers**

Under Section 19(2) of the TNVAT Act, 2006, ITC shall be allowed for the purchase of goods made within the State from a registered dealer.

We noticed (October 2010) during test check of the assessment records in Tiruvottiyur assessment circle, Chennai, that a dealer had availed ITC of ₹ 4.96 lakh on the purchases made by him during the

month of January 2007 from a dealer whose registration certificate was cancelled with effect from 1 January 2007 i.e. from the date of introduction of VAT in the State. The ITC of ₹ 4.96 lakh availed wrongly was required to be reversed and a penalty of ₹ 2.48 lakh was also to be levied.

We pointed this (October 2010) out to the Department and are awaiting their reply (December 2011).

#### **2.15.1.3 Availment of ITC beyond the prescribed time limit**

Under Section 19(11) of the TNVAT Act, 2006, a dealer shall claim ITC in respect of any transaction of taxable purchase before the end of the financial year or before 90 days from the date of purchase, whichever is later.

In Madurai (Rural-South) assessment circle, a dealer availed ITC of ₹ 3.76 lakh on the purchases made during the year 2007-08 in September 2009. Thus, the ITC was availed beyond the period prescribed in the Act. The ITC of ₹ 3.76 lakh was required to

be reversed. Besides penalty of ₹ 1.88 lakh was also leviable.

We pointed this (February 2011) out to the Department and are awaiting their reply (December 2011).

#### **2.15.1.4 Allowance of ITC on zero rated sales**

Under Rule 10(3)(b)(vii) of the Tamil Nadu Value Added Tax Rules, 2007, a dealer who effects zero rated sales shall not be entitled for ITC relating to the stock held on the date of commencement of the TNVAT Act.

In Adyar-II assessment circle, Chennai, a dealer effected sales including zero rated sales out of the closing stock held on 31 December 2006 and availed ITC of ₹ 3.88 lakh. However, proportionate ITC of ₹ 3.19 lakh on closing stock attributable to the zero rated sales was not reversed. In addition, penalty of ₹ 1.59 lakh was also leviable.

After we pointed this (July 2010) out, the Department revised the assessment (March 2011) and reversed the ITC already availed. We are awaiting the details regarding the collection and levy of penalty (December 2011).

#### **2.15.1.5 Allowance of ITC on purchase returns**

Under Section 14 of the TNVAT Act, 2006, where a purchasing dealer has returned the goods to the seller for any reason, the ITC already claimed on the purchase shall be liable to reversal of tax credit.

In Adyar-I assessment circle, Chennai, a dealer returned goods valuing ₹ 12.56 lakh to the seller in May 2007. Instead of reversing the corresponding ITC of ₹ 1.57 lakh pertaining to the purchase returns, he reckoned the same as ITC and availed the same, resulting in excess availment of ITC of ₹ 3.14

lakh. The excess availment of ITC of ₹ 3.14 lakh has to be reversed besides levy of penalty of ₹ 1.57 lakh.

We pointed out the cases mentioned in sub paragraphs 2.15.1.1 to 2.15.1.5 to the Department (March 2011) and to the Government (May 2011). The Government accepted (June 2011) our audit observation mentioned in para 2.15.1.4 in respect of Adyar II assessment circle stating that the assessment was revised. We are awaiting their reply in respect of the other cases (December 2011).



### 2.15.2 Incorrect grant of refund

According to Section 18(1) of the TNVAT Act, 2006, (i) a sale as specified under Section 5(1) or 5(3) of the Central Sales Tax Act, 1956, (ii) a sale to any registered dealer located under Special Economic Zone in the State and (iii) sales to certain international organisations are regarded as zero rated sales.

As per Section 18(2) of the Act, a dealer, who makes zero rated sales, is entitled to refund of input tax paid or payable by him on purchase of those goods, which are exported as such or consumed or used in the manufacture of other goods that are exported. Sale of goods to hundred *per cent* export oriented units is not zero rated sale and is not covered under Section 18(1) of the Act. Accordingly, refund of input tax cannot be allowed in respect of goods involved in sales to hundred *per cent* export oriented units.

We observed during audit (August 2010) in Pudukottai I assessment circle that a dealer who sold rough granite blocks to a hundred *per cent* export oriented unit during the period 2006-07 and 2007-08 was granted refund of ₹ 89.19 lakh in respect of input tax paid on his purchases. Since the sale was not a zero rated sale, the refund allowed was not in order.

After we pointed this out (August 2010), the Department contended (August 2010) that the sale effected to hundred *per cent* export oriented unit was covered under the sub-sections (1) (ii) and (2) of Section 18 of the Act. The reply is not acceptable as the sale effected to hundred *per cent* export oriented unit is not covered by Section 18(1) and the Commissioner of Commercial

Taxes had also clarified (August 2007) that sale to hundred *per cent* export oriented units is not zero rated sale. We await further reply from the Department (December 2011).

We reported the matter (January 2011) to the Government and are awaiting their reply (December 2011).

### **2.15.3 Non-filing of returns by the contractors**

As per Section 21 of the TNVAT Act, every dealer liable to pay tax under this Act, shall file return, in the prescribed manner, along with proof of payment of tax. Rule 7 of the TNVAT Rules, 2007, provides that every registered dealer liable to pay tax under the Act shall file return for each month in Form I on or before 20<sup>th</sup> of the succeeding month to the assessing authority in whose jurisdiction his principal place of business is situated.

According to Section 22 of the Act, if no return is submitted by the dealer for that year, the assessing authority shall, after making such enquiry as it may consider necessary, assess the dealer to the best of its judgement. Further, in addition to the tax so assessed, the assessing authority shall direct the dealer to pay 150 *per cent* of the tax assessed as penalty. Further, under Section 64(4) of the Act, the Commissioner may order for audit of the business of any registered dealer who has not filed returns within the prescribed period.

In order to ascertain whether the Department is utilising the information on tax deducted at source (TDS) available with them to check the filing of returns by the dealers, we cross checked the details of works contracts executed by 29 contractors both within and outside the state for Southern Railway (Construction Wing), Power Grid Corporation Ltd., Trichy and Corporation of Madurai with the assessment records available in the relevant assessment circles. We found that though these contractors had received a sum of ₹ 50.94 crore for the works executed by them during the years 2006-07 to 2009-10, they failed to file their returns for assessment of the

turnover. Though the details of TDS deducted by the contractees was deposited with the Department, the Department did not utilise the information available with them to ensure filing of returns by the contractors to assess the correct tax liability by these registered dealers. Further, for non-filing of returns, penalty at the prescribed rate is also leviable.

After we pointed this out (February 2011), the Department agreed (February 2011) to take action. We are awaiting further reply (December 2011).

We reported the matter (April 2011) to the Government and are awaiting their reply (December 2011).

**We recommend that the systems be strengthened to ensure filing of returns and to ascertain correct payment of tax.**

**2.15.4 Delay in remittance of tax deducted at source**

As per Section 13 of the TNVAT Act, 2006, every person responsible for paying any sum to any dealer for execution of works contract shall deduct an amount calculated at the prescribed rate and deposit the sum so deducted to such authority, in such manner and within such time, as may be prescribed. Further, any person who contravenes the provisions shall pay, in addition to the amount required to be deducted and deposited, interest at one and a quarter *per cent* per month of such amount for the entire period of default. In terms of the Explanation under the Section *ibid*, the term 'person' shall include a local body also.

Rule 9(1) of the Tamil Nadu Value Added Tax Rules, 2007, provides that any person who makes a deduction of tax under Section 13, shall deposit the sum so deducted to the assessing authority having jurisdiction over the person or any other authority authorised to receive such payment, on or before the 20<sup>th</sup> day of the succeeding month in which the deduction was made with a statement in Form R.

We noticed (February 2011) during audit in Tallakulam assessment circle that the Corporation of Madurai deducted tax of ₹ 3.37 crore on the payments made to the contractors during the years 2007-08 to 2009-10 but failed to remit the tax on the due dates. The delay ranged from one month to 23 months which warrants levy of interest. The interest leviable worked out to ₹ 9.63 lakh. Though the information of tax deducted and tax paid was available with the Department, no action was taken to levy the interest. The amount of TDS pending remittance at the end of March 2010 was ₹ 2.28 crore.

After we pointed this (February 2011) out, the Commissioner of Commercial Taxes addressed the Commissioner, Corporation of Madurai insisting upon

the need for timely remittance of TDS. We are awaiting further reply (December 2011).

We reported the matter (February 2011) to the Government and are awaiting their reply (December 2011).

**We recommend that interest be levied in all cases of delayed remittance of TDS.**

## **2.16 Non-compliance of the provisions of the Sales Tax Act/Rules**

*The provisions of the Tamil Nadu General Sales Tax (TNGST) Act and the Rules made thereunder require:*

- (i) Payment of tax on sale or purchase of goods at the rates prescribed in the Schedules to the Act; and*
- (ii) Payment of admitted tax along with the returns and in case of default the payment of penalty/interest at the rates prescribed in the Act.*

*We noticed non-compliance of the provisions of the Act/Rules in some cases involving non/short realisation of ₹ 3.30 crore. These cases are mentioned in paragraphs 2.16.1 to 2.16.7.*

### **2.16.1 Incorrect grant of exemption**

Under the Tamil Nadu General Sales Tax Act, 1959, (TNGST Act) sales of electrically operated travelling (EOT) cranes were taxable at the rate of 12 *per cent* at the point of first sale in the State. In addition, surcharge at the rate of five *per cent* was also leviable thereon.

The Government by a notification dated 17 December 1997, as amended on 1 April 1998, issued under Section 17 of the Act exempted the tax payable by any dealer on the sale of raw materials, packing materials and consumable goods to registered hundred *per cent* export oriented units located in the state.

We noticed (April 2010) during audit in Mettupalayam Road assessment circle, Coimbatore, that the sale of EOT cranes valued at ₹ 50.47 lakh made by a dealer, during the year 2005-06, to a hundred *per cent* export oriented unit was allowed exemption on the strength of the notification issued in April 1998. However, EOT crane being capital goods was not eligible for exemption, as capital goods were not covered in the said notification. This resulted in non-levy of tax of ₹ 6.36 lakh.

After we pointed this out (April 2010), the assessing authority replied (April 2010) that the exemption would be available if covered by Form H<sup>12</sup> declaration. The reply was not acceptable as the exemption was granted under the Tamil Nadu General Sales Tax Act and not under Section 5(3) of the Central Sales Tax Act. We are awaiting further report from the Department (December 2011).

We reported the matter (March 2011) to the Government and are awaiting their reply (December 2011).

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<sup>12</sup> Form H is a declaration form used by the dealers to claim exemption on their pre-export sales under Section 5(3) of the CST Act, 1956.

**2.16.2 Application of incorrect rate of tax**

Under the provisions of the TNGST Act, tax is leviable on the sale or purchase of goods at the rates and at the points mentioned in the relevant schedules to the Act.

We noticed (April/May 2010) during test check of the assessment records in three assessment circles that the assessing authorities while finalising the assessments of three dealers for the years 2005-06 and 2006-07 adopted incorrect rates of tax on the turnover of ₹ 241.42 lakh. This resulted in short

levy of tax of ₹ 12.45 lakh as detailed in the following table:

Sl. No	Assessment circle (No. of dealers)	Year of transaction	Commo—dity	Taxable turn-over (₹ in lakh)	Rate of tax appli-cable	Rate of tax adopted	Short levy of tax (₹ in lakh)
1	Mettupalayam Road, Coimbatore, ( 1 )	2005-06	Hoists	27.66	20	3	4.94
After we pointed this out (April 2010), the assessing authority stated (April 2010) that as the sale was effected against Form XVII <sup>13</sup> declarations, the purchasing dealer alone was liable for differential rate of tax and penalty for misuse of Form XVII declarations. We do not agree with the reply, as concessional rate of tax under Section 3(5) was applicable only in respect of goods falling under the eighth schedule and 'hoist' falling under the first schedule was not eligible for concessional rate of tax							
2	Vadapalani-II ( 1 )	2006-07	Interior decorations (other than 'civil works')	181.94	4	2	3.82
After we pointed this (May 2010) out, the Department revised the assessment (February 2011) and raised additional demand for ₹ 3.82 lakh. We are awaiting the collection details (December 2011).							
3	Tirunelveli Bazaar ( 1 )	2005-06	Steel furniture	31.82	12	1	3.69
After we pointed this (May 2010) out, the Department revised the assessment (November 2010) and raised additional demand for ₹ 3.69 lakh. We are awaiting the collection details (December 2011).							

We reported the matter (May 2011) to the Government and are awaiting their reply (December 2011).

**2.16.3 Short levy of tax**

Under entry 18 of the Eleventh Schedule to the TNGST Act, 'white kerosene (superior kerosene oil)' was taxable at the rate of 25 *per cent* from 21 March 2003 to 31 December 2006. As per Section 2(1)(aa) of the Tamil Nadu Additional Sales Tax Act, 1970, additional sales tax at the prescribed rate was required to be paid by a dealer whose taxable turnover exceeds ten crore of rupees.

**2.16.3.1** We noticed (April 2009) during audit in Ayanavaram assessment circle, Chennai that in respect of an assessee, the enforcement wing of the Department,

<sup>13</sup> Form XVII is used by the dealers to purchase specified goods at concessional rate of tax under Section 3(3) and 3(5) of the Tamil Nadu General Sales Tax Act, 1959.



through a D3<sup>14</sup> proposal for the year 2002-03, informed the assessing authority to ascertain whether 3,000 MT (3846.150 KL) of white kerosene imported by the assessee in April 2003 had been duly accounted for by him. We further noticed that the assessee had declared the purchase of only 152 KL of white kerosene in the monthly return for April 2003. Though the assessee suppressed the purchase of 3,694.150 KL of white kerosene, the assessing authority omitted to consider this suppression and assess the corresponding sales turnover of ₹ 5.17 crore<sup>15</sup>. This resulted in short levy of tax of ₹ 1.47 crore.

After we pointed this out to the Department (August 2009) and to the Government (March 2010), the Government accepting our audit observation intimated (July 2010) that the assessment was revised raising an additional demand of ₹ 1.47 crore. We are awaiting report on collection particulars (December 2011).

Under entry 67 of Part B of the first schedule to the TNGST Act, on sale of vegetable oil of all kinds tax was leviable at the rate of four *per cent* at the point of first sale in the state.

As per Section 3H of the Act every dealer is liable to pay tax at one *per cent* on the turnover of resale of goods specified in the first schedule and the eleventh schedule.

Section 10(3) of the Act states that where any dealer knowingly produces a false bill, voucher, declaration certificate or other document with a view to support or make any claim that a transaction of sale or purchase effected by him is not liable to be taxed or is liable to be taxed at a lower rate, the assessing authority shall, on detecting such production, direct the dealer producing such document to pay as penalty a sum which shall be, in the case of first detection, 50 *per cent* of the tax due and in respect of second or subsequent detections, 100 *per cent* of the tax due on such transactions.

**2.16.3.2** We noticed during audit (December 2008) in Villupuram-I assessment circle that in respect of a dealer, sales turnover of vegetable oil for the years 2004-05 and 2005-06 amounting to ₹ 2.85 crore had been assessed to tax at the rate of one *per cent* under Section 3 H of the Act, treating them as second and subsequent sales.

We cross verified the purchase transactions of the assessee with two dealers in Pollachi, from whom the assessee had purchased vegetable oil for ₹ 17.01 lakh and ₹ 40.57 lakh during the years 2004-05 and 2005-06 respectively and found that the selling dealers had closed their

business much prior to the date on which the purchases were stated to have been made by the assessee. We brought the incorrect claim of second sales by

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<sup>14</sup> The findings of the inspections conducted by the enforcement wing are forwarded to the concerned assessing authority for implementation, in the form of D3 proposals.

<sup>15</sup> Sale value of kerosene was taken at ₹ 14 per litre as adopted by the Department.

the assessee to the notice of the Department and suggested (December 2008) that they should verify the genuineness of the entire purchases stated to have been made by the dealer. The Department re-examined the records and found that the dealer had reported fictitious purchases for a value of ₹ 1.57 crore during the years 2004-05 and 2005-06, in order to evade tax and hence revised (January 2010 and April 2010) the assessments raising an additional demand of ₹ 5.08 lakh, besides levy of penalty of ₹ 5.08 lakh. We are awaiting collection particulars from the Department (December 2011).

We reported the matter to the Government (May 2011) and are awaiting their reply (December 2011).

#### 2.16.4 Erroneous treatment of sale as works contract

As per entry 5(i) of Part E of the first schedule to the TNGST Act, 1959, tax on sale of “generating sets” was leviable at the rate of 16 *per cent* at the point of first sale in the state upto 31 December 2006. In addition, surcharge at the rate of five *per cent* was also leviable, on the tax, under Section 3-I of the Act.

According to Section 7C of the Act, a dealer, who is a works contractor, has the option of paying tax at four *per cent* of the total contract value of the works, other than civil works, executed by him.

The Supreme Court has held<sup>16</sup> that if a thing to be delivered has any individual existence before delivery as the sole property of the party who is to deliver it, then it is a sale; if the major component of the end product is the material consumed in producing the chattel to be delivered and skill and labour are employed for converting the main components into the end products but the skill and labour are only incidentally used, then the delivery of the end product by the seller to the buyer will constitute a

sale.

We noticed during audit (November 2010) in Harbour II assessment circle, that a sum of ₹ 1.06 crore received by a dealer during the year 2006-07 (upto December 2006) from M/s. BSNL, was assessed to tax at four *per cent* under Section 7 C of the Act as works contract even though the predominant portion of the contract constituted supply of diesel generating sets only (₹ 121.53 lakh towards material cost and ₹ 2.75 lakh towards labour charges for the whole year). The erroneous treatment of sale as works contract resulted in short levy of tax of ₹ 13.34 lakh.

After we pointed this (November 2010) out, the Department replied (January 2011) that the contract with BSNL was not only for supply of ‘diesel generating set’ but also installing the same involving technical skill and labour. It was also contended that the diesel generating set is also a ‘power supply based power plant’ eligible for reduced rate of tax of four *per cent* as per notification issued by the Government<sup>17</sup>. We do not agree with the reply of

<sup>16</sup> Hindustan Shipyard Limited Vs. State of Andhra Pradesh – 119 STC P.533(SC)  
State of Andhra Pradesh Vs. Kone Elevators – 140 STC P.22 (SC).

<sup>17</sup> No. II(1)/CT/19(6-17)/2002 dated 27.03.2002.

the Department, since the diesel generating sets delivered to the customer have an individual existence and the predominant portion of the contract constituted sale of goods only. Further, the reduced rate of tax was not applicable to diesel generating sets as the notification did not cover generating sets. It was also judicially held<sup>18</sup> that a 'diesel generating set' is a distinct and different class from 'switch board power supply and power plant for telecom application'. We are awaiting further reply from the Department (December 2011).

We reported the matter (April 2011) to the Government and are awaiting their reply (December 2011).

#### **2.16.5 Excess availment of deferral of sales tax**

The Interest Free Sales Tax (IFST) deferral scheme enables industries to pay their sales tax after completion of the period of deferral, without interest thereon. The scheme is implemented by agencies such as the State Industries Promotion Corporation of Tamil Nadu Limited, Tamil Nadu Industrial Investment Corporation Limited, etc. They issue Eligibility Certificates (ECs) specifying the eligible amount and period of deferral based on which the industries are allowed to avail the deferral scheme.

The Government had issued instructions in May 1991 that if tax had been paid by the assessee for the period included in the ECs for sales tax waiver/deferral before the actual issue of ECs, the period of deferral/waiver would be rescheduled suitably by the implementing agencies concerned at the request of the assessee, subject to overall ceiling of investments. The ECs issued by the implementing agencies also stipulate that the amount of deferral/waiver during such extended period be restricted to the amount of tax already paid by the assessee.

We noticed (August 2010) during test check of the assessment files and other records in Tirupur (South) assessment circle that a dealer had availed deferral of sales tax, in respect of an expanded unit, for the period from April 1997 to March 2006 with an overall ceiling limit of ₹ 2.88 crore. As the orders for deferral were issued only on 12 November 2001, the dealer had paid tax of ₹ 1.05 crore during the period from April 1997 to July 2001. The period of deferral was rescheduled from 1 August 2001 to 31 July 2010. Thus, as per orders for rescheduling, the amount of deferral during such extended period be restricted to tax already paid i.e. ₹ 1.05 crore. Our scrutiny of records revealed that during the extended period the dealer had availed deferral of ₹ 1.85 crore. This resulted in excess availment of deferral of ₹ 80.42 lakh, during the period from April 2006 to June 2010.

After we pointed this out (August 2010), the Department

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<sup>18</sup> Reliance Generators Pvt. Ltd. Vs Special Commissioner and Commissioner of Commercial Taxes, Chepauk, Chennai and another – 20 VST 136.



contended (August 2010) that the overall limit for deferral amount should include sales tax actually paid as well as the sales tax deferral availed during the period of deferral. We do not agree with the reply of the Department since the EC issued by SIPCOT clearly stipulates that the sales tax benefit for the extended period should be restricted to the sales tax already remitted. We await further reply from the Department (December 2011).

We reported the matter (April 2011) to the Government and are awaiting their reply (December 2011).

### 2.16.6 Non-levy of additional sales tax

In terms of Section 2(1)(aa) of the Tamil Nadu Additional Sales Tax Act, 1970, additional sales tax at the prescribed rates is required to be paid by a dealer whose taxable turnover exceeds ten crore of rupees. In respect of dealers who opt to pay tax at compounded rate under Section 7C of the TNGST Act, 1959, the additional sales tax shall be calculated on the turnover assessable under the section *ibid*.

In Adyar-II assessment circle, we noticed (July 2010) that in respect of one dealer the assessing officer had omitted to levy additional sales tax even though the taxable turnover of the dealer exceeded ₹ 10 crore for the assessment year 2005-06. The non-levy of additional sales tax worked out to ₹ 10.24 lakh.

We pointed this out to the Department/Government (July 2010/March 2011) and are

awaiting their reply (December 2011).

### 2.16.7 Non-levy of interest

As per Section 24(3) of the TNGST Act, on any amount remaining unpaid after the date specified for its payment, the dealer shall pay, in addition to the tax due, interest at one and a half *per cent* per month for the first three months and at two *per cent* per month for the remaining period of default. According to Section 13(2) of the Act, the tax shall become due, without issue of any notice of demand to the dealer, on the date of receipt of the return or on the last due date prescribed, whichever is later. As per Section 9(2-A) of the CST Act, the provisions relating to interest on belated payment of tax under TNGST Act shall apply in respect of interest leviable under the CST Act also.

**2.16.7.1** We observed during audit (February / November 2010 and February 2011) in three assessment circles<sup>19</sup> that three dealers had paid tax of ₹ 43.86 lakh belatedly. However, interest of ₹ 27.47 lakh for such belated payment of tax was omitted to be levied.

After we pointed this out (February/ November 2010 and

<sup>19</sup> Ambattur, Esplanade I and Fast Track Assessment Circle-II (Coimbatore).

February 2011), the Department demanded (December 2010) interest in one case and in another case stated (November 2010) that notice would be issued. In respect of the third case, the Department contended (February 2011) that levy of interest on belated payment does not arise in those cases where higher rate of tax was adopted for non-submission of declaration forms. We do not accept the reply of the Department since there is no provision in the Act to preclude levy of interest in such circumstances. We are awaiting further report from the Department (December 2011).

We reported the matter to the Government (April/May 2011) and are awaiting their reply (December 2011).

**2.16.7.2** We noticed (June 2010) in Harbour V assessment circle that though a dealer had paid tax of ₹ 11.35 lakh after a delay of 28 months and two days, interest of ₹ 6.20 lakh was omitted to be levied.

After we pointed this out (June 2010), the assessing authority agreed to take action based on our observation. We are awaiting further report from the Department (December 2011).

We reported the matter (April 2011) to the Government and are awaiting their reply (December 2011).

As per Section 7F of the TNGST Act, every person responsible for paying any sum to any dealer for execution of works contract shall deduct an amount calculated at prescribed rates and deposit the sum so deducted to such authority, in such manner and within such time, as may be prescribed. Further, any person who contravenes the above provisions shall pay, in addition to the amount required to be deducted and deposited, interest at two *per cent* per month on such amount for the entire period of default.

Rule 18-F of the Tamil Nadu Sales Tax Rules, 1959, provides that any person who makes a deduction of tax under Section 7F, shall deposit the sum so deducted to the assessing authority having jurisdiction over the person within the 12<sup>th</sup> day of the succeeding month in which the deduction was made.

**2.16.7.3** We noticed (March 2011) in Palakarai-I assessment circle, Trichy, that an assessee, who deducted tax on the payments made to the contractors during the years 2005-06 and 2006-07, deposited the amount belatedly, which attracts levy of interest. However, interest amounting to ₹ 15.99 lakh was not levied.

We pointed this out to the Department/ Government in March 2011/April 2011 and are awaiting their reply (December 2011).

## **2.17 Cross check of records**

According to Standing Order 226 (4) of the Tamil Nadu Commercial Taxes Manual, the Central Excise Department can offer useful data about the cases of evasion. The field officers of the Commercial Taxes Department have to

get the details of such evasion detected by the Central Excise Department and investigate them.

In order to ascertain whether the Department has established a system to obtain the information from the Central Excise authorities to utilise the same for making assessments/revision, we cross verified the orders of the Settlement Commission, Customs and Central Excise, Chennai and Orders-in-Original passed by the Central Excise Department with the assessment records in the commercial tax offices and observed the following:

Under Section 16(1)(a) of the TNGST Act, where the whole or any part of the turnover of the business of a dealer has escaped assessment to tax, the assessing authority may determine to the best of its judgement the turnover which has escaped assessment and levy tax thereon. Section 16(2) of the Act provides that in making an assessment of the escaped turnover under Section 16(1)(a) *ibid*, the assessing authority may levy penalty at the prescribed rates.

**2.17.1** We noticed (March 2011) during such cross verification of information, cases relating to suppression of sales turnover by the assessee by using various methods like keeping two sets of invoices, undervaluing the sales, clandestine removal of goods, etc. and misclassification of goods resulting in escapement of taxable turnover and adoption of incorrect rate of tax during the years 1998-99 to 2006-07 involving tax and penalty of ₹ 3.24 crore in respect of 12 dealers in 11 assessment circles<sup>20</sup>

as detailed in **Annexure-II**. Two illustrative cases are discussed in the following paragraphs:

- An assessee in Brough Road assessment circle, Erode, a manufacturer of pre-stressed concrete pipes, undervalued the goods cleared during the year 2001-02 by fabricating the statutory records in order to avail SSI exemption. The Central Excise authorities initiated action by issuing a Show Cause Notice dated 9 October 2002 demanding a duty of ₹ 33.33 lakh. The assessee approached the Settlement Commission and the Commission in their order dated 19 May 2003 confirmed the above demand. We noticed that the Commercial Taxes Department did not obtain the information about the suppression of turnover from the Settlement Commission and assess the turnover to tax. The tax and penalty involved worked out to ₹ 48.33 lakh.
- An assessee in Erode Rural assessment circle, who manufactured MS ingots and rods, clandestinely cleared the goods manufactured by it, between April 2006 and September 2006 without paying the central excise duty. The clandestine removal of goods was detected by the Central Excise Department and the duty liability was confirmed in Order-in-Original passed by the Commissioner of Central Excise, Salem, in January 2011. We noticed that the Commercial Taxes Department did not obtain the information on the suppressed turnover from the Central Excise Department and assess the sales turnover to tax. The tax and penalty involved worked out to ₹ 20.91 lakh.

<sup>20</sup> Adyar-II, Avarampalayam (Coimbatore), Brough Road (Erode), Dindigul (Rural), Erode (Rural), Kilpauk, Sankari, Sriperumpudur, T.Nagar (South), Tiruppur (South), and Woraiyur (Trichy).

Thus the Commercial Taxes Department did not follow the provisions of their own Manual which provides for obtaining the information available with the Central Excise Department for using the same in making assessment/revision of assessment in these cases.

We pointed this out to the Department and to the Government in March/April 2011 and are awaiting their reply (December 2011).

**We recommend that the Commissioner of Commercial Taxes may prescribe a system for cross verification of records with other Departments to detect evasion of tax.**

**2.17.2** We cross verified the information available in the orders passed by the Settlement Commission, Customs and Central Excise, Chennai, with the relevant records maintained in Woraiyur assessment circle, Trichy, and found that in respect of an assessee, for the year 2002-03, though suppression of purchase turnover amounting to ₹ 22.94 crore was brought to assessment, penalty of ₹ 1.38 crore leviable was not levied.

We pointed this out to the Department and to the Government in March/April 2011 and are awaiting their reply (December 2011).